APPENDIX.

Pertinent Provisions of the Interstate Commerce Act as Amended by the Transportation Act, 1920.

(41 U. S. Stat. at Large, C. 91, pp. 476-478, Sec. 402, 49 U. S. C. A., Sec. 1, pars. (18) to (22), pars. (18) to (22) of Section 1 of Interstate Commerce Act.)

SEC. 402. The paragraphs added to section 1 of the Interstate Commerce Act by the Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' as amended, in respect of car service, and for other purposes," approved May 29, 1917, are hereby amended to read as follows:

* * * * * * *

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of

a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

"(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment

the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided,* That no such authoriza-

tion or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

(41 U. S. Stat. at Large, C. 91, pp. 479-480, Sec. 405, 49 U. S. C. A., Sec. 3, pars. (3) and (4), pars. (3) and (4) of Section 3 of Interstate Commerce Act.)

SEC. 405. * * * * * * *

The second paragraph of section 3 of the Interstate Commerce Act is hereby amended to read as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including mainline track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or

other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

Pertinent Provisions of the Constitution of the State of California.

(Const. of Cal., Art. XII, Secs. 22 and 23.)

SEC. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the State of California. The commission shall be appointed by the governor from the state at large; *provided,* that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; *and provided, further,* that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commissioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners,

but pending such action the salaries of the commissioners, their officers and employees shall remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers

and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpœnas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "railroad commission act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. (Amendment adopted October 10, 1911.)

SEC. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided

by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however,* that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town,

voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further,* that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further,* that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. (Amendment adopted November 3, 1914.)

Pertinent Provisions of Public Utilities Act of the State of California.

(Statutes of California 1915, C. 91, p. 115.)

SEC. 13. (b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. (p. 122)

SEC. 22. (a) Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a

common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges. (p. 128)

SEC. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees. (p. 132)

SEC. 31. The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. (p. 132)

SEC. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public

utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commis-

sion shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured. (p. 134)

SEC. 41. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof, and the commission shall have power to ascertain and direct the payment, prior to such use, of fair

and just compensation for damage suffered, if any. (p. 136)

SEC. 67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the supreme court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimina-

tion. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section. No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases (p. 161).

Portions of Petition for Rehearing filed in the Supreme Court of the State of California, June 16, 1930, Showing That the Question of the Validity of the Certificates Issued by the Interstate Commerce Commission Was Raised in That Court.

The Atchison, Topeka & Santa Fe Railway Company, a corporation, et al., Petitioners, vs. Railroad Commission of the State of California, et al., Respondents.	S. F. Nos. 13,056, 13,057 and 13,058

PETITION FOR REHEARING.

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II.

THE COURT RULED ERRONEOUS STATEMENTS OF FACT RESPECTING THE INTERSTATE COMMERCE COMMISSION'S CERTIFICATES.

At page 466 of the report of your opinion the following appears:

> "The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission. *No question*

> *has been raised by anyone as to their insufficiency* and since they had been issued and were in existence and became a part of the order of the Railroad Commission at the time the writ of review was issued by this court no uncertainty existed at such time as to their content *and no dispute existed as to their sufficiency.*" (Italics ours.)

We respectfully submit that the above words which we have italicized are contrary to the facts as will plainly appear from the following statement:

The Interstate Commission assumed to issue those certificates in a proceeding brought against the carriers, not on the application of the carriers, but over their objection and protest. See the Interstate Commerce Commission opinion and report reprinted in respondent's brief, volume 2, pages 221 to 256, where the order for the certificates is set out at page 240, and the certificates themselves at page 254, and the fact that they were issued over our objection appears at page 249.

The first words on page 41 of our brief in support of petitions for writs of review, are these:

> "Under subdivisions 18 to 21 of section 1 of the Act, (meaning Interstate Commerce Act) no extensions of line nor abandonments of operations may be made except upon *applicants filed by the interested carriers* and certificates obtained from the Interstate Commerce Commission." (Italics ours.)

At page 210 of the Railroad Commission's brief counsel for the Commission say:

> "But, say the carriers, the Interstate Commerce Commission may not even issue 'certificates' under the Interstate Commerce Act save on application by themselves. Any action taken except on such voluntary application is, they urge, void and of no effect.
>
> "This same argument was strenuously made by these carriers when they appeared before the Interstate Commerce Commission, and their brief before that body prior to its last decision contains much argument to this effect. Suffice it to say here, however, that the Interstate Commerce Commission was not impressed with these arguments."

In a note at the bottom of page 211 it is said:

> "That the matter was fully considered and passed upon by the Interstate Commerce Commission is evident not only from its action in issuing the certificates in question, but also from the fact that the only dissenting commissioner (Brainerd) based his dissent upon this ground."

We reproduced and amplified in our reply brief what we had submitted to the Interstate Commerce Commission. See pages 60 to 72 of our reply brief under the heading, *"The Certificates of the Interstate Commerce Commission Are Void."* See also pp. 72-3. In that part of our reply brief we cited cases from the United States Supreme Court indi-

cating that the provisions for the issuance of certificates of convenience and necessity were for use by the carriers. We also referred to analogous provisions in the Interstate Commerce Commission Act; referred to the proceedings in Congress on the Transportation Act 1920, and to the orders and instructions issued by the Commission for applications for certificates of convenience and necessity.

The opinion of the U. S. Supreme Court, in the second Union Station case, intimates a lack of power in the Federal Commission to issue such certificates "adversely to the carriers in compulsory proceedings." See appendix to brief of *amici curiae*, p. xix.

We will not weary the court by the reproduction of this argument, but we wish to impress upon the court as thoroughly as we can our view that the statements quoted from the court's opinion, namely, that no question has been raised by anyone as to the sufficiency of the certificates, are directly contrary to the fact.

III.

The Court Erred in Holding That the Certificates of the Interstate Commerce Commission Are Proper and Sufficient on Their Face.

We respectfully ask your further consideration of the first sentence quoted above from your opinion at page 466, namely:

> "the certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States."

Taking this in connection with the further statement that no question has been raised by anyone as to their sufficiency, we are led to believe that no consideration has been given to the question raised and argued in the briefs, that no valid certificates could issue except on the application of the carriers. For, as already shown, it does appear fully in these proceedings that the certificates were not so issued, but in an adversary proceeding against carriers. Indeed this appears from the very entitling of the proceedings in which they were issued. We believe that the pages of the brief, to which we have above referred (Petitioners' Reply Brief, pages 60 to 73) show that the Interstate Commerce Commission had no jurisdiction to issue the certificates or any of them except on carrier's application, and that the certificates are, therefore, not on their face proper or sufficient.

IV.

THE COURT ERRED IN HOLDING THAT THE ORDER OF THE RAILROAD COMMISSION OF CALIFORNIA HAS BECOME EFFECTIVE.

At page 461 of the report of your opinion the following paragraph appears:

> "The Railroad Commission of California then made the order under review here which was based upon its own findings and the above findings of the Interstate Commerce Commission and was made conditional upon the issuance by the Interstate Commerce Commission of proper and sufficient certificates covering and authorizing the con-

> structions, extension, and abandonments authorized in said order of the Railroad Commission. Such certificates were issued later by the Interstate Commerce Commission after a further hearing and the order of the Railroad Commission, to which the carriers are here objecting, *became effective.*" (Italics ours.)

We had entertained some doubt as to whether or not the validity of the certificates in question could be determined in this proceeding for if the court should hold the State Commission's order valid it would be unnecessary to go further and say whether or not it has become effective; and if the court should hold the order invalid it would be equally unnecessary to decide whether or not if it had been valid it would have become effective.

But it did appear to us that the order of the Railroad Commission was conditional, indefinite and uncertain; that the carriers should not be required at their peril to determine whether subsequent orders or certificates made by the Interstate Commerce Commission were "proper and sufficient certificates" as required by the State Commission's order.

Now in order to say that the State Commission's order became effective (assuming that it could become effective on issuance of certificates by the Interstate Commerce Commission) it must first be found that *valid* certificates have been issued by the latter Commission. We do not find in the papers and files before

the court anything on which to base a determination that the certificates (so-called) copies of which are in the record, are valid. It does appear, as already shown, that they were issued not on carriers' motion or application but over their protest and objection. Furthermore, paragraph 19 of section 1 of the Interstate Commerce Act as amended in 1920 requires that upon receipt of any application for any such certificate

> "the Commission shall cause notice thereof to be given to and a copy filed with the governor of each state in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates."

No notice was given to the governor of California. No notice was published. This failure to comply with the law does not appear, however, in the record before the court. On or after the day we filed our petitions for writs in these proceedings the respondent advised us that the Commission had caused copies of the certificates to be added to its files in the Union Station proceedings. This had been done without notice to us and without our knowledge, without calling a hear-

ing or giving us an opportunity to object. We are not complaining of that action; we do not perceive that it has deprived us of any rights.

Because the Interstate Commission made no affirmative order against us we had no appeal or ground for injunction (see our Reply Brief, p. 72). Therefore we may attack the validity of the certificates whenever and wherever they are presented as a ground of action. It is only fair to add that we are advised at the Commission's office in Washington that notices under paragraph 19 are only required when application under paragraph 18 is made by the carrier. On what theory this construction of the law is based, we do not know.

Amici curiae in their brief dated December 30, 1929, at pages 41 and 42, say that objection to these certificates was not made in the petition of the carriers for rehearing before the Railroad Commission, and hence cannot be availed of by them before this tribunal.

We replied to this as follows, in our answer to their brief dated January 27, 1930, at page 42:

> "It is suggested that we did not raise this point of invalidity in our petition for rehearing filed with the State Commission. How could we? That petition had to be filed under the law within 30 days after the decision was made. The decision is dated July 8, 1927 (see page 221 of Vol. II of Respondents' Brief). Our petition for rehearing had to be filed not later than August 7, 1927, and

was in fact filed on or about July 27, 1927, but the certificates in question were not issued until May 8, 1928. (See Appendix 4, to Brief of *amici curiae.*)"

While we have suggested these facts chiefly in connection with our proposition that the order of the State Commission was indefinite, conditional and uncertain, yet we are not adverse to having it decided in these proceedings, if it can be done, whether or not the order of the Railroad Commission has become effective, but we insist as earnestly as we can that we be not represented as conceding or not questioning the validity of those certificates. We have questioned them at every opportunity.

We therefore ask the court to give consideration to the question whether the validity or invalidity of the certificates issued by the Interstate Commerce Commission can be adjudicated in these proceedings. We ask the court to eliminate from its opinion anything suggesting that the carriers acquiesce or have ever acquiesced in the validity or sufficiency of those certificates or any of them, and we beg especially that it be made clear beyond cavil whether or not the validity of those certificates and the present effectiveness of the order under review are adjudicated in these proceedings.